

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

-B. 64/18

No. of 2018

BETWEEN:

BRENDAN CRAIG THOMS
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
Defendant

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WRIT OF SUMMONS

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her
other Realms and Territories, Head of the Commonwealth:

20 TO THE DEFENDANT

Commonwealth of Australia
Care of Australian Government Solicitor
Level 11, 145 Ann Street
Brisbane 4000

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TAKE NOTICE that this proceedings has been brought against you by the plaintiff
for the claim set out in this Writ.

IF YOU INTEND TO DEFEND the proceeding, you must file a notice of
appearance in the office of the Registry named above.

IF YOU ARE WILLING TO SUBMIT to any order that the Court may make, save
as to costs, you may file a submitting appearance in the office of the Registry
named above.

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THE TIME FOR FILING AN APPEARANCE is as follows:

- (a) where you are served with the application within Australia – 14 days from
the date of service;
- (b) in any other case – 42 days from the date of service.



WRIT OF SUMMONS

Filed on behalf of the Plaintiff
78B Notice

Maurice Blackburn Lawyers
Level 3
SOUTHPORT QLD 4215
Telephone: 07 5561 1300
Facsimile: 07 5571 2733
Our Reference: CZJ/5425221

The nature of the claim made and the relief which the plaintiff seeks are as follows:

The Commonwealth of Australia through a delegate of the Minister for Home Affairs, on 27 September 2018, purported to cancel the Plaintiff's Subclass 444 Special Category (temporary) visa ("the purported cancellation") pursuant to s. 501(3A) *Migration Act 1958* ("the Act") and, on 28 September 2018, in purported reliance upon s. 189 of the Act, took the Plaintiff against his will into custody and continues to detain the Plaintiff against his will at the Brisbane Immigration Transit Accommodation at 100 Sugarmill Road, Pinkenba 4008 ("BITA") which has the potential outcome of the Plaintiff being removed, purportedly pursuant to s. 198(2B)(ii) of the Act, to New Zealand and prevented from ever returning to Australia.

The Plaintiff claims that the actions of the Defendant and its agents in detaining him are unlawful in that the Plaintiff, as a member of the Aboriginal race of Australia and the child of an Australian citizen, also a member of the Aboriginal race of Australia, as a person who was born on 16 October 1988 and who travelled to Australia with his parents on a Subclass 444 Special Category (temporary) visa in November 1994 and whose residence has, since that date, been within Australia, is a member of the Australian community and is not an alien and is not susceptible to any powers purportedly bestowed by the Act on the executive government to take actions directed to remove the Plaintiff's right to reside permanently in Australia or to remove him from Australia.

The Plaintiff seeks the following relief against the Defendant:

1. A declaration that the detention of the Plaintiff, subsequent to the purported cancellation of the Plaintiff's Subclass 444 Special Category (temporary) visa is unlawful and not supported by s. 189 of the Act or any other law;
2. A declaration that the Plaintiff is not an alien nor a person requiring naturalisation for the purposes of s. 51(xix) of the Constitution of the Commonwealth of Australia;
3. An injunction directing the release of the Plaintiff from detention purportedly imposed pursuant to powers under the Act directed at the detention and removal from Australia of unlawful non-citizens;
4. An interlocutory injunction directing the release of the Plaintiff pending the determination of the Plaintiff's claim;
5. Damages for wrongful imprisonment;
6. Costs of the proceeding;
7. Such further or other order as the Court considers appropriate.

Dated 4 December 2018



Claire Gibbs, Solicitor for the Plaintiff

Lawyer's Certification (see section 486I of the Migration Act 1958)

I, Claire Gibbs, the lawyer filing this document commencing migration litigation, certify that there are reasonable grounds for believing that this migration litigation has a reasonable prospect of success.



Signature of the lawyer filing application

Date: 4 / 12 / 2018

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The Plaintiff's address is:

Care of the Brisbane Immigration Transit Accommodation
100 Sugarmill Road
Pinkenba 4008

The Plaintiff's address for service is:

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Care of Maurice Blackburn Lawyers
Level 3, 35-39 Scarborough Street
SOUTHPORT QLD 4215

